



STATE OF MISSISSIPPI

PHIL BRYANT
GOVERNOR

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

TRUDY D. FISHER, EXECUTIVE DIRECTOR

April 20, 2012

Certified Mail No. 7011 3500 0000 3106 4287

Mr. Michael F. McNair
Regulatory Branch Chief
U.S. Army Corps of Engineers, Vicksburg District
4155 Clay Street
Vicksburg, Mississippi 39183-3435

Dear Mr. McNair:

Re: U.S. Army Corps of Engineers
Nationwide Permit 21 (b)
Warren County
COE No. MVK-2012-196
WQC No. WQC2012053

The Mississippi Department of Environmental Quality (Department) has received and reviewed the public notice dated February 21, 2012, in which the U.S. Army Corps of Engineers requested Section 401 Water Quality Certification for the Nationwide Permits. This letter pertains solely to Nationwide Permit 21(b), which reads as follows:

Nationwide Permit No. 21b – Surface Coal Mining Activities authorizes discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations.

(b) Other Surface Coal Mining Activities. Surface coal mining activities that were not previously authorized by the NWP 21 issued on March 12, 2007, are authorized by this NWP, provided the following criteria are met:

- (1) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or as part of an integrated permit processing procedure by the Department of Interior, Office of Surface Mining Reclamation and Enforcement;
- (2) The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and

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OFFICE OF POLLUTION CONTROL

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ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal individual and cumulative adverse effects. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters; and

- (3) The discharge is not associated with the construction of valley fills. A "valley fill" is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.

Notification: For activities under paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 31.)

On March 15, 2012, the Department issued a letter stating intentions to deny the project based on the concern that proposed activity in conjunction with other activities may result in adverse cumulative impacts. As required in Chapter 3 of the Mississippi Wastewater Regulations, the Department has provided 30 days for these concerns to be addressed. To date no further correspondence regarding this denial has been received by the Department. Therefore, the Department denies the request for a Section 401 Water Quality Certification for Nationwide Permit 21(b).

Chapter 3 Section VI, Part A of the State of Mississippi's *Wastewater Regulations for National Pollutant Discharge Elimination System (NPDES) Permits, Underground Injection Control (UIC) Permits, State Permits, Water Quality Based Effluent Limitations and Water Quality Certification* regulations provides as follows:

2. Within thirty days after the date the Department denies and/or revokes certification, an applicant may file a written request for an informal review with the Department. The Department shall fix the time and place of such informal review and shall notify the applicant thereof.
3. Within thirty days after (1) the date the Department denies certification or (2) the date of the informal review in which the Department makes a decision to continue to deny certification, the applicant may file a written request for a formal hearing before the Permit Board. The request shall set forth grounds for the hearing request and be made in accordance with Miss. Code Ann. 49-17-29(4)(b).

If you have any questions, please contact Carrie Barefoot of my staff at (601) 961-5322.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rich Harrell", is written over a faint circular official stamp.

Richard Harrell, P.E. DEE, Director
Office of Pollution Control

RH: chb

cc: U.S. Army Corps of Engineers, Mobile District
Attn: Mr. Craig Litteken, Regulatory Branch Chief
U.S. Army Corps of Engineers, Memphis District
Attn: Mr. Tim H. Flinn, Acting Regulatory Branch Chief
U.S. Army Corps of Engineers, Nashville District
Attn: Mr. Brad Bishop, Western Regulatory Section Chief
Mr. Jan Boyd, Department of Marine Resources
Ms. Kathy Lunceford, U.S. Fish and Wildlife Service
Mr. William Cox, Environmental Protection Agency